



BIDEN'S COVID-19 BORDER CRISIS

President Biden's failure to enforce federal law at the southern border has led to an historic humanitarian and public health crisis. While the Biden Administration maintains high standards for COVID-19 restrictions for American citizens, like keeping federal employees at maximum telework,¹ requiring masks in some federal buildings,² and renewing the public health emergency declaration,³ they simultaneously threaten to risk importing new cases from undocumented immigrants into the U.S. by rolling back use of Title 42.⁴ This title has protected Americans from new exposure of COVID throughout the pandemic.

Since President John Adams, public health service commissioners have taken various roles to protect American citizens from the serious threat of disease.⁵ In 1893, Congress enacted Title 42, which expanded the authority of the President and the Surgeon General in cases of public health emergencies by allowing them to suspend immigration.⁶

- Under Title 42, the Department of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) may prohibit entry into the United States from another country if there is a “serious danger of the introduction” of a communicable disease from the country of origin, in order to protect the “interest of the public health.”⁷
- On March 20, 2020, in response to the public health threat from COVID-19, HHS and the CDC announced a suspension of accepting immigrants arriving from Mexico and Canada under Title 42. The announcement cautioned that “The public health risks of inaction are stark.”⁸ Although President Biden has maintained Title 42 for adults, he has exempted families and children.⁹ From October 2021-September 2022, CBP denied entry to over 1.05 million immigrants under Title 42 due to the risk of spreading COVID-19.¹⁰

While U.S. COVID-19 cases decrease and the virus becomes managed like other communicable diseases, COVID-19 remains a threat globally and the Biden administration maintains the national emergency status of COVID-19 in the United States.¹¹

- There remain hundreds of cases of COVID-19 among migrants who are detained at an Immigration and Customs Enforcement (ICE) facility for illegally crossing the border.¹²
- Furthermore, beginning in January 2022, the Biden administration began requiring immigrants to show proof of vaccination before being allowed in the United States.¹³ In this way, the Biden administration believes that COVID is a threat, yet wants to take away other essential protections like Title 42.

Several lawsuits have impacted implementation of Title 42. As of December 2022, Title 42 must remain in place due to an administrative stay issued by the Supreme Court.

- The Supreme Court ordered Title 42 stay in place at least until it hears arguments in February or March of 2023 for a lawsuit filed by 19 states, led by Arizona, that argues ending Title 42 would create an unprecedented national border crisis.¹⁴
- The Biden administration has failed to present a policy to manage the illegal immigration crisis without Title 42 in place, further proving the crisis of their COVID border policies.

Congress should support border policies that protect the United States from the danger of spreading communicable diseases. For example, the Protecting Americans from Unnecessary Spread upon Entry from COVID-19 (PAUSE) Act would require Title 42 to remain in effect until all public and federal public health emergencies for COVID-19 end.¹⁵

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¹ Operating Status. Office of Personal Management. Updated January 24, 2023. <https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/current-status/>

² DOL COVID-19 Guidance. Department of Labor. January 2023. <https://www.dol.gov/sites/dolgov/files/general/plans/2022-covid-19-workplace-safety-plan.pdf>

³ “Renewal of Determination That a Public Health Emergency Exists.” Administration for Strategic Preparedness and Response. Department of Health and Human Services. January 11, 2023. <https://aspr.hhs.gov/legal/PHE/Pages/covid19-11Jan23.aspx>

⁴ Kight, Stef. “Scoop: White House eyes ending migrant family expulsion by July 31.” Axios. June 20, 2021. <https://www.axios.com/scoop-white-house-eyes-ending-migrant-family-expulsion-b6d0a178-001e-41e8-9f5b-17cc7547cccc.html>

⁵ “Our History” Commissioned Corps of the U.S. Public Health Service. <https://www.usphs.gov/history>

⁶ “Scope of CDC Authority Under Section 361 of the Public Health Service Act (PHSA).” Congressional Research Service. April 13, 2021. <https://crsreports.congress.gov/product/pdf/R/R46758>

⁷ U.S. Code. 42 USC 265 <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title42-section265&num=0&saved=%7CKHRpdGxIOjQyIHNIY3Rpb246MjY0IGVkaXRpb246cHJlbGltKQ%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim> and “Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions.” U.S. Customs and Border Protection. <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>

⁸ “Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists.” U.S. Department of Health and Human Services Centers for Disease Control and Prevention. March 20, 2020. https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf

⁹ Melchior, Jillian. “Biden’s Border Crisis, Up Close.” Wall Street Journal. March 29, 2021. https://www.wsj.com/articles/bidens-border-crisis-up-close-11617057522?mod=hp_opin_pos_1

¹⁰ “Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions.” U.S. Customs and Border Protection. <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>

¹¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/18/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic-2/>

¹² “ICE Guidance on COVID-19” U.S. Immigration and Customs Enforcement. Updated January 23, 2023. <https://www.ice.gov/coronavirus#quotations>

¹³ CBP COVID-19 Updates and Announcements. U.S. Customs and Border Patrol. Updated June 29, 2022. <https://www.cbp.gov/newsroom/coronavirus>

¹⁴ Howe, Amy. “States ask Supreme Court to keep Title 42 border policy in effect. SCOTUS blog. December 19, 2022. <https://www.scotusblog.com/2022/12/states-ask-supreme-court-to-keep-title-42-border-policy-in-effect/>

¹⁵ H.R. 471- Pause Act of 2021. Congress.gov. <https://www.congress.gov/bill/117th-congress/house-bill/471> and “Herrell Act of Stop the Spread of COVID-19 at the Border.” Congresswoman Yvette Herrell. January 26, 2021. <https://herrell.house.gov/media/press-releases/herrell-acts-stop-spread-covid-19-border>